

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> ANDRE SCICERE, JR.  <b>(b)</b> County of Residence of First Listed Plaintiff _____  <b>(c)</b> Attorney's (Firm Name, Address, Telephone Number and Email Address)  Craig Thor Kimmel, Esquire Kimmel & Silverman, P.C. 30 E. Butler Pike Ambler, PA 19002 (215) 540-8888		<b>DEFENDANTS</b> NCO FINANCIAL SYSTEMS, INC.  County of Residence of First Listed Defendant _____  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  Attorneys (If Known) _____																									
<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant) <table style="width:100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>			PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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<b>V. ORIGIN</b> (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) _____ <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment																											
<b>VI. CAUSE OF ACTION</b> Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>15 U.S.C. § 1692</u> Brief description of cause: <u>Fair Debt Collection Practices Act</u>																											
<b>VII. REQUESTED IN COMPLAINT:</b> <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																											
<b>VIII. RELATED CASE(S)</b> (See instructions): JUDGE _____ DOCKET NUMBER _____  Explanation: <u>5/10/13</u>																											
DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____																											

## UNITED STATES DISTRICT COURT

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM** to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 16345 130th Ave., Apt. 3G, Jamaica, NY 11434

Address of Defendant: 507 Prudential Rd., Horsham, PA 19044

Place of Accident, Incident or Transaction: \_\_\_\_\_  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

**A. Federal Question Cases:**

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify) \_\_\_\_\_

**B. Diversity Jurisdiction Cases:**

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify) \_\_\_\_\_
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify) \_\_\_\_\_

**ARBITRATION CERTIFICATION**

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 5/10/13

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 5/10/13

Attorney-at-Law

57100

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

ANDRE SCICERE, JR.	:	
	:	
v.	:	CIVIL ACTION
	:	
NCO FINANCIAL SYSTEMS, INC.	:	NO.
	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ☒
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

5/10/13  
Date

Craig Thor Kimmel  
Attorney-at-law

Plaintiff, Andre Scicere, Jr.  
Attorney for

215-540-8888  
Telephone

877-788-2864  
FAX Number

kimmel@creditlaw.com  
E-Mail Address



1                                   **IN THE UNITED STATES DISTRICT COURT**  
2                                   **FOR THE**  
3                                   **EASTERN DISTRICT OF PENNSYLVANIA**

4   ANDRE SCICERE, JR.,                                   )

5                                   Plaintiff                                   )

6                                   v.                                   )

7                                   NCO FINANCIAL SYSTEMS, INC.,                                   )

8                                   Defendant                                   )

9                                   **Case No.:**

10                                   **COMPLAINT AND DEMAND FOR**  
11                                   **JURY TRIAL**

12                                   **(Unlawful Debt Collection Practices)**

13                                   **COMPLAINT**

14                   ANDRE SCICERE, JR. ("Plaintiff"), by and through his attorneys,  
15                   KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL  
16                   SYSTEMS, INC. ("Defendant"):

17                                   **INTRODUCTION**

18                   1.     Plaintiff's Complaint is based on the Fair Debt Collection Practices  
19                   Act, 15 U.S.C. §1692 *et seq.* ("FDCPA"), which prohibits debt collectors from  
20                   engaging in abusive, deceptive, and unfair practices, and the Telephone Consumer  
21                   Protection Act, 47 U.S.C. §227 *et seq.* ("TCPA").  
22                     
23                     
24                     
25

## JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has its principal office in the Commonwealth of Pennsylvania, and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

## PARTIES

5. Plaintiff is a natural person residing in Jamaica, New York 11434.

6. Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. § 1692k(a), and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

7. Defendant is a national debt collection company with its corporate headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a consumer

1 debt of another person.

2 9. Defendant acted through its agents, employees, officers, members,  
3 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
4 representatives, and insurers.  
5

6  
7 **FACTUAL ALLEGATIONS**  
8

9 10. At all relevant times, Defendant was contacting Plaintiff in an attempt  
10 to collect an alleged consumer debt of another person.

11 11. Upon information and belief, the alleged debt, a Time Warner Cable  
12 residential account, arose out of transactions, which were primarily for personal,  
13 family, or household purposes.  
14

15 12. Beginning in March 2013, and continuing through April 15, 2013,  
16 Defendant continuously and repeatedly contacted Plaintiff on his cellular  
17 telephone in its attempts to collect a debt of another person, specifically a person  
18 named "David Sit."  
19

20 13. Plaintiff knew it was Defendant calling because he received numerous  
21 automated messages, wherein Defendant identified itself as "NCO Financial  
22 Systems."  
23

24 14. Also, Plaintiff has spoken with Defendant's collectors and they have  
25 identified themselves as calling from "NCO Financial Systems."

1       15. Defendant contacted Plaintiff, on average, one (1) to four (4) times a  
2 day, calling him multiple days a week during the relevant period.

3       16. In those instances when the parties spoke, Defendant's collectors  
4 claimed they were calling to collect a debt from a third party named "David Sit."  
5

6       17. Plaintiff is not "David Sit" and no one named "David Sit" lives at the  
7 number Defendant was calling.

8       18. On numerous occasions, Plaintiff informed Defendant that he is not  
9 "David Sit," that no one named "David Sit" lives at the number it was calling, to  
10 remove his number from its database, and to stop calling him.  
11

12       19. Defendant's collectors acknowledged Plaintiff's request, claiming that  
13 his telephone number would be removed from the database and that calls would  
14 stop.  
15

16       20. However, Defendant continued to call in its attempts to collect a debt  
17 of a third person.  
18

19       21. Plaintiff has never conferred upon Defendant implied or expressed  
20 consent to call his cellular telephone.

21       22. Plaintiff has never given the original creditor implied or expressed  
22 consent to call his cellular telephone about this account.  
23

24       23. Defendant's telephone calls were not placed to Plaintiff for  
25 "emergency purposes," as specified in 47 U.S.C. §227(b)(1)(A).

1       24. Over the period in question, upon information and belief, Defendant  
2 called Plaintiff's cellular telephone using an automatic telephone dialing system or  
3 an artificial or prerecorded voice.  
4

5       25. When Defendant was told that the debtor could not be found at the  
6 number being called, there was no purpose for additional calls to Plaintiff except  
7 to harass, annoy or abuse Plaintiff.  
8

9       26. Defendant failed to update its records and/or failed to investigate the  
10 information provided by Plaintiff to avoid further harassment.

11       27. Defendant continued to call through at least, April 15, 2013.  
12

13 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES**  
14 **ACT**  
15 **COUNT I**

16       24. Defendant's conduct, detailed in the preceding paragraphs, violated  
17 15 U.S.C. §1692b(3).  
18

- 19       a. Section 1692b(3) of the FDCPA prohibits a debt collector from  
20 communicating with any person other than a consumer more  
21 than once unless requested to do so by such person or unless  
22 the debt collector reasonably believes that the earlier response  
23 of such person is erroneous or incomplete and that such person  
24 now has correct or complete location information.  
25



## COUNT II

a. Section 1692d of the FDCPA prohibits debt collectors from engaging in any conduct the natural consequences of which is to harass, oppress or abuse any person in connection with the collection of a debt.

c. Defendant violated §§1692d and 1692d(5) of the FDCPA when it called Plaintiff approximately one (1) to four (4) times a day, including weekends, with the intent to annoy, abuse and harass Plaintiff, as Plaintiff had informed Defendant on more than one

1 occasion it was calling the wrong person.

2 **COUNT III**

3  
4 26. Defendant's conduct, detailed in the preceding paragraphs, violated 15  
5 U.S.C. §1692f.

6 a. Section 1692f of the FDCPA prohibits debt collectors from  
7 using unfair or unconscionable means to collect or attempt to  
8 collect any debt.

9  
10 b. Here, Defendant violated §1692f of the FDCPA by failing to  
11 update its records to avoid the further harassment of Plaintiff  
12 after having been told it was calling the wrong person, as well  
13 as failing to remove Plaintiff's number from its call logs, as  
14 evidenced by its continued calls to Plaintiff.  
15

16 **DEFENDANT VIOLATED THE TELEPHONE CONSUMER**  
17 **PROTECTION ACT**

18 **COUNT IV**

19 27. Section 227(b)(3)(A) of the TCPA authorizes a private cause of action  
20 for a person or entity to bring in an appropriate court of that state "an action based  
21 on a violation of this subsection or the regulations prescribed under this subsection  
22 to enjoin such violation."  
23

24 28. Section 227(b)(3)(B), of the Act authorizes a private cause of action  
25 for a person or entity to bring in an appropriate court of that state "an action to

1 recover for actual monetary loss from such a violation, or to receive \$500 in  
2 damages for each such violation, whichever is greater.”

3  
4 29. Despite the fact that Plaintiff never consented to Defendant making  
5 calls to her cellular phone, Defendant repeatedly placed non-emergency calls to  
6 Plaintiff's cellular telephone without Plaintiff's consent.

7  
8 30. The Act also authorizes the Court, in its discretion, to award up to  
9 three (3) times the actual damages sustained for violations.

10 31. Here, Defendant repeatedly and regularly placed non-emergency,  
11 automated calls to Plaintiff's cellular telephone, using a pre-recorded or artificial  
12 voice.

13  
14 32. Upon information and belief, Defendant contacted Plaintiff on his  
15 cellular telephone dozens of times.

16 33. Defendant did not have Plaintiff's express consent prior to contacting  
17 his cellular telephone using an automatic telephone dialing system or pre-recorded  
18 or artificial voice.

19  
20 34. Defendant's conduct violated §227(b)(1)(A)(iii) of the TCPA by  
21 making any call using any automatic telephone dialing system or an artificial  
22 prerecorded voice to a telephone number assigned to a cellular telephone service.

23  
24 WHEREFORE, Plaintiff, ANDRE SCICERE, JR., respectfully prays for a  
25 judgment as follows:

- a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);
- d. Statutory damages of \$500.00 for each violation of the TCPA, pursuant to 47 U.S.C. § 227(c)(5)(B); and
- e. Any other relief deemed appropriate by this Honorable Court.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, ANDRE SCICERE, JR., demands a jury trial in this case.

DATED: 5/10/13

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

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